

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

HOME BANK, S.B., )  
                        )  
                        )  
Plaintiff,         )  
                        )  
                        )  
v.                     ) Case No. 1:12-cv-01366-TWP-DKL  
                        )  
                        )  
WESLEY SCOTT WOODARD, )  
DINA WOODARD,         )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC., )  
THE LENDING CONNECTION, INC., )  
                        )  
                        )  
Defendants.         )  
                        )  
                        )  
                        )  
M&T BANK,             )  
                        )  
                        )  
Counter Claimant,    )  
                        )  
                        )  
v.                     )  
                        )  
HOME BANK, S.B.,      )  
                        )  
                        )  
Counter Defendants. )  
                        )  
                        )  
M&T BANK,             )  
                        )  
                        )  
Cross Claimant,       )  
                        )  
                        )  
v.                     )  
                        )  
WESLEY SCOTT WOODARD, )  
DINA WOODARD,         )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEM, INC., )  
LENDING CONNECTION, INC., )  
                        )  
Cross Defendants.     )

## **ENTRY**

This matter is before the Court on Plaintiff Home Bank, S.B.’s (“Home Bank”) Motion to Remand and Response to Woodards’ Notice of Removal (Dkt. 34). Home Bank and Counter Claimant M&T Bank filed the instant foreclosure actions in the Bartholomew Superior Court in Bartholomew County, Indiana. The actions were removed to this Court by Defendants Wesley Scott Woodard and Dina Woodard (collectively, “the Woodards”) on the basis of diversity jurisdiction. *See* 28 U.S.C. § 1332(a). Home Bank has filed this Motion to Remand asserting that because it is a citizen of Indiana, complete diversity does not exist. Finding there is not complete diversity among the parties, Home Bank’s Motion (Dkt. 34) is **GRANTED**.

### **I. DISCUSSION**

“For a case to be within the diversity jurisdiction of the federal courts, diversity of citizenship must be ‘complete’ meaning that no plaintiff may be a citizen of the same state as any defendant.” *Fidelity & Deposit Co. of Md. v. Sheboygan Falls*, 713 F.2d 1261, 1264 (7th Cir. 1983). In their filings, the Woodards assert that they are citizens of the United States of America, citizens of the State of Indiana, and residents of Bartholomew County, Indiana (Dkt. 11)<sup>1</sup>. In their supplemental Jurisdictional Statement (Dkt. 9), the Woodards allege that “Home Bank is incorporated in the State of California and its principal place of business is California” and allege that “M&T Bank is incorporated in the State of New York and its principal place of business is in New York.” Home Bank now asserts in compliance with Local Rule 81-1 that it is not a citizen of California, but is, in fact, incorporated and has its principal place of business in Indiana—the state of which the Woodards are citizens. In support of its assertions, Home Bank has presented an affidavit from Dan L. Moore, the President and Chief Executive Officer of

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<sup>1</sup> In his Notice of Unauthorized Appearance (Dkt. 25), Mr. Woodard asserts that this Court lacks jurisdiction and that his filing “in no way should be construed as consent to jurisdiction.” He does not, however, deny that he is a citizen of Indiana.

Home Bank and its Certificate of Existence filed with the Secretary of State of Indiana. (See Dkt. 35 and 35-1.) The Woodards did not respond to the Motion to Remand and, thus, have not demonstrated that there is complete diversity between the Plaintiff and all defendants, a burden that is theirs. See *Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 617 (7<sup>th</sup> Cir. 2012) (“party invoking federal jurisdiction bears the burden of demonstrating its existence”). In light of the evidence, the Court finds that like the Woodards, Home Bank is also a citizen of Indiana, which destroys complete diversity among the parties. See 28 U.S.C. 1332(c).

Further, the fact that M&T Bank is not a citizen of Indiana does not save the Woodards’ removal to federal court. 28 U.S.C. § 1441(b) does not permit removal “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” Given that the Woodards are citizens of Indiana and the foreclosure actions were filed in an Indiana state court, 28 U.S.C. § 1441(b) bars removal.

## II. CONCLUSION

Accordingly, Home Bank’s Motion to Remand (Dkt. 34) is **GRANTED**. M&T Bank’s Motion for Summary Judgment (Dkt. 16) and Home Bank’s Motion for Summary Judgment (Dkt. 29) are terminated as **MOOT** and can be refiled in the state court. This case is **REMANDED** to the Bartholomew Superior Court.

**SO ORDERED.**

Date: 09/13/2013

Tanya Walton Pratt  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

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